

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRIAN KERRY O'KEEFE,

Case No. 3:16-cv-00430-MMD-VPC

Petitioner,

ORDER

v.

ROBERT LEGRAND, *et al.*,

Respondents.

The Court dismissed this action because petitioner had neither filed an application to proceed *in forma pauperis* nor paid the filing fee. (ECF No. 3.) Petitioner has filed a motion for relief (ECF No. 5), in which he shows that he had submitted a request to prison officials to pay the fee around the same time that he mailed his habeas corpus petition to the Court. The Court received that payment the day after petitioner filed his motion for relief. The Court grants petitioner's motion and reinstates the action.

Petitioner is a prisoner in the custody of the Nevada Department of Corrections. He is challenging the validity of a detainer placed by the State of Ohio. The Court will serve upon respondents for a response, but it is possible that a more suitable forum would be a federal district court in Ohio. *See Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 499 n.15 (1973)

It is therefore ordered that petitioner's motion for relief (ECF No. 5) is granted. The Clerk of the Court is directed to reopen this action.

1 It is further ordered that the Clerk of the Court file the petition for a writ of habeas
2 corpus.

3 It is further ordered that the Clerk add Adam Paul Laxalt, Attorney General for the
4 State of Nevada, as counsel for respondents.

5 It is further ordered that the Clerk electronically serve upon respondents a copy
6 of the petition and this order. In addition, the Clerk will return to petitioner a copy of the
7 petition.

8 It is further ordered that respondents will have forty-five (45) days from the date
9 on which the petition was served to answer or otherwise respond to the petition.
10 Respondents must raise all potential affirmative defenses in the initial responsive
11 pleading, including untimeliness, lack of exhaustion, and procedural default. Successive
12 motions to dismiss will not be entertained. If respondents file and serve an answer, then
13 they must comply with Rule 5 of the Rules Governing Section 2254 Cases in the United
14 States District Courts, and then petitioner will have forty-five (45) days from the date on
15 which the answer is served to file a reply. If respondents file a motion, then the briefing
16 schedule of Local Rule LR 7-2 shall apply.

17 It is further ordered that any exhibits filed by the parties must be filed with a
18 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF
19 attachments that are filed further must be identified by the number or numbers (or letter
20 or letters) of the exhibits in the attachment. The hard copy of any additional state court
21 record exhibits must be forwarded — for this case — to the staff attorneys in Las Vegas.


22 It is further ordered that, henceforth, petitioner must serve upon respondents or,
23 if appearance has been entered by counsel, upon the attorney(s), a copy of every
24 pleading, motion or other document submitted for consideration by the court. Petitioner
25 must include with the original paper submitted for filing a certificate stating the date that
26 a true and correct copy of the document was mailed to the respondents or counsel for
27 the respondents. The Court may disregard any paper received by a district judge or

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1 magistrate judge that has not been filed with the Clerk, and any paper received by a
2 district judge, magistrate judge, or the Clerk that fails to include a certificate of service.

3 It is further ordered that the Clerk of the Court send a copy of this order to the
4 United States Court of Appeals for the Ninth Circuit, Case No. 16-16546.

5 DATED THIS 13th day of October 2016.

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9 MIRANDA M. DU
10 UNITED STATES DISTRICT JUDGE
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